

ORDINANCE NO. 20-04

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPEALING ARTICLE II OF CHAPTER 14 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE AND ESTABLISHING A NEW ARTICLE V OF CHAPTER 32 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH ENTITLED "SEA TURTLE CONSERVATION", PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town of Fort Myers Beach, Florida ("Town") recognizes that artificial lighting and other human activities on the beach and upland areas have a detrimental effect on the life-cycle and nesting activities of sea turtles, which are an endangered species protected by federal and state law, and therefore subject to reasonable regulations as proposed herein; and

WHEREAS, the Town also recognizes that both its economy and the quality of life of its residents are enriched by a healthy sea turtle population; and

WHEREAS, the Town desires to minimize the detrimental impact on nesting sea turtle populations, and other listed sensitive wildlife by implementing a system of rules and regulations that reduces the amount of artificial light intentionally or unintentionally visible from beaches;

WHEREAS, on January 21, 2020 the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on February 18, 2020 the Town Council held a second reading of this proposed Ordinance.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:¹

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. Article II of Chapter 14 of the Town of Fort Myers Beach Land Development Code, a copy of which is attached hereto as Exhibit “A” is hereby repealed.

Section 3. A new Article V of Chapter 32 of the Code of Ordinances of the Town of Fort Myers Beach entitled “Sea Turtle Conservation s hereby adopted to read as follows:

CHAPTER 32 – WATERWAYS AND BEACHES
ARTICLE V – SEA TURTLE CONSERVATION

Sec. ____ - Article Purpose and Objectives

The purpose of this Article is to protect nesting and hatchling sea turtles on the beaches in the Town of Fort Myers Beach (“Town”) by ensuring that their nesting habitat is not degraded by artificial light. The objective of the Article is to ensure artificial light does not interfere with sea turtle nesting and hatching events through the appropriate design and implementation of coastal lighting systems. In order to further the objective of full implementation, this Article also includes provisions designed to educate residents and beach users in the Town on the benefits of appropriate coastal lighting and provides for ~~monthly~~ **weekly** inspections to ensure compliance with the acceptable lighting standards.

Sec. ____ - Applicability

The provision of this Article shall apply to all properties within the Town that may produce artificial light directly, indirectly, or cumulatively visible from any portion of the beach, regardless of whether those properties are beachfront properties; and to all buildings and related infrastructure, including landscaping, as well as all other activities that may adversely impact sea turtles.

Sec. ____ - Definitions

Artificial Light means the light emanating from any human-made device.

Beach means the zone of unconsolidated material that extends landward from the mean low water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation.

Cumulatively Visible means ~~visibility as a result of~~ **light from** numerous artificial light sources **on a single property** that as a group are directly or indirectly visible to an observer standing anywhere on the beach

Directly Visible means visibility of the glowing elements, lamps, globes, or reflectors of an artificial light source by an observer standing anywhere on the beach.

Disorientation means an event caused by direct, indirect, or cumulative artificial lighting on sea turtle nesting habitat resulting in the disruption in the ability of nesting sea turtle females and sea turtle hatchlings to find the sea from the beach.

Foot Candle means the English unit for measuring illuminance; the uniform illumination of a surface one foot away from a point source of one candela; one lumen per square foot; equal to 10.76 lux.

Frontal Dune means the first natural or man-made mound or bluff of sand which is located landward of the beach and which has sufficient vegetation, height, continuity, and configuration to offer protective value.

Full Cutoff means a lighting fixture constructed in such a manner that no light emitted by the fixture, either directly from the lamp or a diffusing element or indirectly by reflection or refraction from any part of the luminaire, is projected at or above 90° as determined by photometric test or certified by the manufacturer.

Fully Shielded means a lighting fixture constructed in such a manner that the glowing elements, lamps, globes, or reflectors of the fixture are completely covered by an opaque material to prevent them from being directly visible from the beach. Any structural part of the light fixture providing this shielding must be permanently affixed.

Indirectly Visible means visibility of reflected light as a result of glowing elements, lamps, globes, or reflectors of an artificial light source which is visible to an observer standing anywhere on the beach without the light source being directly visible.

Lighting Plan means plan view and cross section drawings describing location, number, wattage, wavelength, elevation, orientation, fixture cut sheets, and all types of proposed exterior artificial light sources, including, but not limited to, artificial lighting affixed to permanent structures, outdoor lighting, pool lighting, and internally or externally lighted signs.

Long Wavelength means a luminaire emitting light wavelengths of 560 nanometers or greater and absent wavelengths below 560 nanometers. Lamps that meet the definition of Long Wavelength through the use of filters, gels, or lenses are not recommended permitted.

Nesting Season means the nesting period for sea turtles is from May 1 through October 31 of each year. Nesting season may be extended before or after these dates

on an annual basis based on nesting activity observed in the Town of Fort Myers Beach.

Nighttime means the locally effective time period between sunset and sunrise.

Non-egress Lighting means lighting that is not being used to light a distinct path or meet minimum requirements for emergency egress, including but not limited to decorative lights (e.g. Christmas lights, strobe lights, string lights, etc.), balcony lights, ceiling fan lights, landscape lights, and uplights.

Outdoor Area means any portion of a property that could have an artificial light source not attached to a permanent structure, including but not limited to pathway lighting, landscape lighting, pool lighting, etc.

Sea Turtle means any turtle, including all life stages from egg to adult, of these species: Green (*Chelonia mydas*), Leatherback (*Dermochelys coriacea*), Loggerhead (*Caretta caretta*), Hawksbill (*Eretmochelys imbricata*), and Kemp's Ridley (*Lepidochelys kemp*). For the purposes of this ordinance, the term sea turtle is synonymous with marine turtle.

Sea Turtle Nesting Habitat means all sandy beaches adjoining the waters of the Atlantic Ocean, the Gulf of Mexico, and the Straits of Florida in all coastal counties and all inlet shorelines of those beaches. Nesting habitat includes all sandy beach and unvegetated or sparsely vegetated dunes immediately adjacent to the sandy beach and accessible to nesting female turtles.

Take means an act that actually kills or injures marine turtles, and includes significant habitat modification or degradation that kills or injures marine turtles by significantly impairing essential behavioral patterns, such as breeding, feeding, or sheltering.

Temporary Lighting means any non-permanent light source that may be hand-held or portable including but not limited to tiki torches, lanterns, flashlights (including cell phone flashlights), candles, flash photography, etc.

Tinted glass means glass modified via tinting, film or other material to reduce the inside to outside light transmittance value to 15%.

Sec. _____ - Annual Public Notice

At least thirty days prior to the commencement of every sea turtle nesting season, the Town shall provide written notice summarizing the provisions contained in this Article to each property adjacent to the beach.

Sec. _____ - Exterior Lighting Affixed to New Structures, New Construction and Improvements to Existing Structures

(a) All artificial lighting affixed to the exterior of new permanent structures, construction or additions shall be long wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required foot-candles.

(b) All non-egress lighting affixed to the exterior of permanent structures shall not be directly, indirectly, or cumulatively visible from any portion of the beach.

(c) Lighting at egress points shall be limited to the minimum number of fixtures and foot-candles necessary to meet federal, state, and local safety requirements.

(d) Locations including but not limited to stairwells, elevators, parking garages, or courtyards shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach. Window film, tinting, light screens, shades or curtains shall be used to block visibility of interior lights from the beach. Light screens shall be used on open or enclosed staircases on the seaward or shore-perpendicular side of a building or for parking garages to limit visibility of lights from the nesting beach.

(e) All glass windows, walls, railings and doors on the seaward and shore-perpendicular sides of any new construction shall utilize glass with an inside to outside light transmittance value of 15% or less.

(f) Emergency lights shall be on a separate circuit and activated only during power outages or other situations in which emergency lighting is necessary for public safety.

(g) Prior to issuance of a development order and/or building permit for all new structures, new construction and improvements to existing structures seaward of the Coastal Construction Control Line as defined by §161.053, Florida Statute, a Town approved lighting plan meeting the provisions of this Article is required.

(h) Prior to issuance of a development order and/or building permit for all multifamily, commercial and industrial new structures, new construction and improvements to existing structures landward of the Coastal Construction Control Line as defined by §161.053, Florida Statute, a Town approved lighting plan meeting the provisions of this Article is required.

(i) Prior to the issuance of a certificate of occupancy (CO) or a certificate of completion (CC), the exterior lighting of new development shall be inspected after dark by the Town, with all exterior lighting turned on, to determine compliance with the approved lighting plan and this Article.

Sec. _____ – Existing Exterior Lighting

1. Existing artificial lighting affixed to the exterior of permanent structures shall not be directly, indirectly, or cumulatively visible from any portion of the beach during sea turtle nesting season.
2. Appropriate techniques for existing exterior lighting to achieve compliance with the provisions of this Article include, but are not limited to:
 - a. Reposition, modify or remove existing lighting fixtures so that the point source of light or any reflective surface of the light fixture is no longer directly, indirectly or cumulatively visible from the beach;
 - b. Replace fixtures having an exposed light source with fully shielded fixtures;
 - c. Replace any light source, light bulb or lamp that is not long wavelength (e.g. incandescent, fluorescent, or high intensity lighting) with the lowest wattage long wavelength (e.g. LED or low pressure sodium) light source or lamp available for the specific application;
 - d. Replace non-directional fixtures with directional fixtures that point down and away from the beach;
 - e. Provide shields for fixtures visible from the beach and not practical to immediately be replaced. Beachside shields are to cover 270 degrees and extend below the bottom edge of the fixture on the seaward side so that the light source or any reflective surface of the light fixture is not visible from the beach;
 - f. Replace pole lamps with low-profile, low-level luminaries so that the light source or any reflective surface of the light fixture is not visible from the beach;
 - g. Plant or improve vegetation buffers between the light source and the beach to screen light from the beach;
 - h. Construct a ground level barrier to shield light sources from the beach. Ground-level barriers must not interfere with sea turtle nesting or hatchling emergence, or cause short- or long- term damage to the beach and dune system;
 - i. Permanently remove or permanently disable any fixture which cannot be brought into compliance with the provisions of these standards.
 - j. Televisions shall be shielded or positioned such that they are not directly, indirectly, or cumulatively visible from the beach.

3. The following measures can reduce or eliminate the negative effects of interior light emanating from doors and windows within line-of-sight of the beach:

a. Apply window tint or film that meets the light transmittance standards for tinted glass;

b. Rearrange lamps and other moveable fixtures away from windows;

c. Use opaque shades or room darkening window treatments (e.g., blinds, curtains, screens) to shield interior lights from the beach.

Sec. _____ - Outdoor Areas

(a) All lighting of outdoor areas shall be long wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required foot-candles.

(b) All pathway lighting shall utilize low-level fixtures that do not exceed 42 inches in height. Fixtures shall be downward directed and utilize long wavelength lamps and beachside shields.

(c) All non-egress outdoor lighting shall not be directly, indirectly, or cumulatively visible from any portion of the beach.

(d) Internally or externally lighted signs shall not be located on the seaward and shore-perpendicular sides of any structures, and shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach.

(e) Ponds and fountains on the seaward and shore-perpendicular sides of any structures shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach.

(f) Fire, including cooking fires, bonfires and fire pits, if permitted by the Town, shall be shielded with an opaque structure or partition, and positioned such that the flame is not directly, indirectly, or cumulatively visible from any portion of the beach.

(g) Televisions shall be located landward of the dune and shall be shielded or positioned such that they are not directly, indirectly, or cumulatively visible from the beach.

(h) Temporary lighting shall not be directly, indirectly, or cumulatively visible from the beach. Handheld and other portable temporary lighting shall not be directed toward or used in a manner that disturbs sea turtles or other coastal wildlife.

Sec. _____ - Parking Areas and Roadways

(a) All lighting of parking areas and roadways shall be long wavelength, downward directed, full cutoff, fully shielded, and mounted to the minimum level required to maintain compliance with federal, state and local law.

(b) Parking area and roadway lighting shall be shielded from the beach via vegetation, natural features, or artificial structures rising from the ground. These shall prevent artificial light sources, including but not limited to vehicular headlights, from producing light that is directly, indirectly, or cumulatively visible from any portion of the beach.

(c) Lighting of roadways and parking areas shall produce no more lighting than the minimum requirement as outlined by federal, state and local law.

(d) Lighting of parking areas and roadways shall consist of either:

(1) Ground-level downward-directed fixtures, equipped with interior dark non-reflective baffles or louvers, mounted either with a wall mount, on walls or piles, facing away from the beach, or

(2) Bollard-type fixtures, which do not extend more than 42 inches above the adjacent floor or deck, measured from the bottom of fixture, equipped with downward-directed louvers that completely hide the light source, and externally shielded 180 degrees on the side facing the beach, or

(3) Pole-mounted lights, if required, which shall:

a. Only be used in parking areas and roadways when mounting the lights at lower elevations cannot practicably comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety.

b. Located on the landward sides of buildings and shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach.

c. Mounted at the minimum height necessary to meet the minimum light level requirement.

d. Downward-directed onto non-reflective surfaces.

(4) Equipment yards, storage yards, and temporary security lights shall also adhere to the lighting restrictions contained herein.

Sec. _____ - Pool Areas

(a) Lighting of pool decks, pool facilities, swimming pools, and spas shall be long wavelength, and downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required foot-candles.

(b) Lighting of the pool water surfaces and the pool wet deck surfaces shall comply with the minimum light levels set forth in applicable federal and state laws designed to protect public safety.

(c) Above-water lighting of pool decks, pool facilities, swimming pools, and spas shall otherwise adhere to the applicable requirements for acceptable light fixtures set forth herein

(d) Underwater lighting of pools or spa light shall:

(1) Be mounted horizontally in the wall,

(2) Not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach, and

(3) Shall comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety.

Sec. _____ -3.5. - Pier Structures

(a) Lighting of pier structures projecting over the beach or over water shall be long wavelength, downward directed, and fully shielded.

(b) Lighting of pier structures projecting over the beach, or over water, shall be mounted no higher than 42 inches above the deck surface. These shall be directed onto the deck surface only, preventing light pollution or light spillage beyond the walking surface.

(c) Lighting of pier structures projecting over the beach or over water shall comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety.

Sec. _____ - Dune Walkovers and Beach Access Points

(a) Lighting of beach access points shall be restricted to that portion of the structure landward of the dune. All lighting of beach access points shall be long wavelength, downward directed, full cutoff and fully shielded and shall not be directly, indirectly, or cumulatively visible from the beach.

~~(b) No lights shall be permitted on dune walkovers or elevated walkovers to the beach. Lights are allowable on dune walkovers or elevated boardwalks only as required for building code purposes and may only be installed landward of the frontal dune. Walkover lighting shall not be directly, indirectly or cumulatively visible from the beach.~~

Sec. _____ - Special Events, Vehicles, Raking and Temporary Lighting

(a) All special events or construction taking place on or adjacent to the beach require a permit from the Town, and may require a permit from the Florida Department of Environmental Protection.

(b) Lighting associated with a special event that may directly, indirectly, or cumulatively be visible from any portion of the beach shall not be authorized at nighttime during sea turtle nesting season.

(c) The operation of all vehicles, except emergency and law enforcement vehicles or those permitted on the beach for sea turtle conservation in accordance with Florida Statute 379.2431 (1), or other research and conservation, shall be prohibited on the beach at nighttime during sea turtle nesting season. Excepted, non-emergency vehicles shall affix red filter to their headlights when operating on sea turtle nesting habitat at nighttime.

(d) Beach raking activities during sea turtle nesting season, if permitted by the Town, shall not:

(1) Operate at nighttime;

(2) Begin before 9:00 a.m. or before the completion of daily monitoring for turtle nesting activity by the Florida Fish and Wildlife Conservation Commission (FWC) authorized marine turtle permit holder, whichever occurs first;

(3) Occur within ten (10) feet of any marked sea turtle nest.

(e) Within sea turtle nesting season, temporary work zone lighting for roadway construction and during declared emergencies shall be directed away from the beach to avoid illumination of or direct visibility from the beach. Work zone luminaires shall be shielded to avoid lighting areas outside of the immediate construction area.

(f) All other temporary construction lighting shall be:

(1) Inclusive of all the standards herein, including utilizing fixtures that are long wavelength, downward directed, full cutoff, and fully

shielded so light is not directly or indirectly visible from the beach, and

(2) Turned off during nighttime in sea turtle nesting season, or if temporary lighting is deemed necessary during sea turtle nesting season it shall only be allowed from 6:00 am to 9:00 pm, must be restricted to the minimal amount necessary, and shall incorporate all the standards herein; and

(3) Mounted less than eight feet above the adjacent floor or deck, measured from the bottom of fixture, and

(4) Restricted to the minimal number of foot-candles necessary to conform to the applicable construction safety regulations.

Sec. _____ - Beach Furniture and Obstructions

- (a) Man-made objects shall not obstruct sea turtle nesting habitat during nesting season during nighttime. All obstructions, including, but not limited to beach furniture, cabanas, umbrellas, tents, personal watercraft, bikes, vehicles, and boats, shall be removed from sea turtle nesting habitat between the hours of 9:00 p.m. and 7:00 a.m. during sea turtle nesting season.
- (b) During sea turtle nesting season, permitted beach furniture vendors shall not place beach furniture onto sea turtle nesting habitat before 9:00 a.m., or prior to the completion of daily monitoring for sea turtle nesting activity by the FWC authorized marine turtle permit holder, whichever comes first.
- (c) No beach furniture or other man-made object shall be placed within ten (10) feet of a marked sea turtle nest.

Sec. _____ - Take and Disorientation

- (a) A person, firm, or corporation shall not cause a disorientation of nesting sea turtles or sea turtle hatchlings.
- (b) A person, firm, or corporation shall not take, disturb, mutilate, destroy, cause to be destroyed, transfer, sell, offer to sell, molest, or harass any sea turtle species or hatchling, or parts thereof, or the eggs or nest of any sea turtle species.

Sec. _____ - Penalties

(a) Any violation of this article may be prosecuted in accordance with the provisions set out in section 1-5 and Chapter 2, article V of the Land Development Code.

(b) This article may be enforced by any duly authorized law enforcement officer, town code enforcement officer or town designee.

(c) The law enforcement officer, town code enforcement officer or town designee is authorized and empowered to make inspections at reasonable hours of all activities regulated by this article in order to ensure compliance with the provisions of this article. Any person who violates any provision of this chapter, or of any regulation or guideline that implements this chapter, shall be ordered immediately to stop all work.

(d) Any person who takes any action or omission in violation of any provision of this Article and fails to cure such violation after proper notice is provided, shall be subject to a fine of up to \$250 per day per violation for initial violations, and \$500 per day per violation for repeat violations. All penalties incurred as a result of violation of this Article shall continue to accrue until such violations are cured.

(e) Nothing contained herein will prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article. Such other lawful action will include, but will not be limited to, an equitable action for injunctive relief or an action at law for damages.

Section 4. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 5. Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 6. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

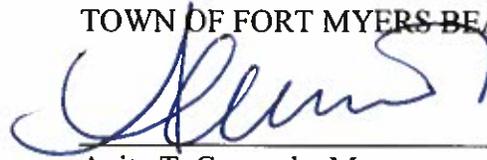
Section 7. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Shamp and seconded by Vice Mayor Murphy and upon being put to a roll call vote, the result was as follows:

Anita Cereceda, Mayor	aye
Ray Murphy, Vice Mayor	aye
Joanne Shamp, Councilmember	aye
Rexann Hosafros, Councilmember	aye
Bruce Butcher, Councilmember	aye

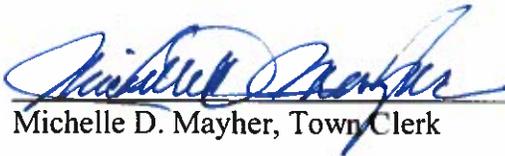
ADOPTED this 18th day of February, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



Anita T. Cereceda, Mayor

ATTEST:



Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:



John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 3rd day of March 2020.